

Memorandum

*Flex your power!
Be energy efficient!*

To: DEPUTY DISTRICT DIRECTORS FOR
ENVIRONMENTAL

Date: December 12, 2002

File: EMO

From: DENISE O'CONNOR *Denise O'Connor*
Chief
Environmental Management Office
Division of Environmental Analysis – MS27

Subject: Changes to CEQA and CEQA Guidelines

With the coming of the New Year, many new laws and changes to existing laws are going into effect. During the 2001 – 2002 session, legislation was passed that revised a number of sections of the California Environmental Quality Act (CEQA) as codified in Public Resources Code, Division 13, Sections 21000 et seq. In addition, the California Court of Appeals recently invalidated several existing CEQA Guidelines (*Communities for a Better Environment v. California Resources Agency*, Case Number C038844, November 2002).

Attached to this memorandum is a summary of the legislative and judicial changes to CEQA (Public Resources Code, Division 13, Sections 21000 et seq.) and the CEQA Guidelines (California Code of Regulation, Title 14, Sections 15000 et seq.). Of particular note to the Department is the new requirement to submit electronic copies of documents to the State Clearinghouse and the recently invalidated regulations.

If you have any questions regarding this memorandum or its attachment, please contact Kelly Dunlap at (916) 651-8164 or me at (916) 653-5157.

Attachment


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CEQA Regulation and Guidelines Changes 2002/2003

Revisions and Additions to CEQA

CLEARINGHOUSE SUBMITTALS—ELECTRONIC FORMAT AND SUFFICIENT COPIES (PUBLIC RESOURCES CODE 21082.1 AND 21091)

Public Resources Code 21082.1(c)(4) now requires state lead and responsible agencies, such as the Department, to submit a sufficient number of copies of draft environmental impact reports, proposed negative declarations and proposed mitigated negative declarations to the State Clearinghouse. At a minimum, the State Clearinghouse is requesting 15 copies of the environmental document. The Department must submit enough copies of the environmental document to allow review and comment by the applicable state agencies. For example, if 18 agencies are checked on the reviewing agencies page of the Notice of Completion, at least 18 copies of the environmental document must be sent to the State Clearinghouse.

In addition, an electronic copy of the report or declaration must be submitted to the State Clearinghouse. Allowable formats include .pdf files and .doc files. At this time the State Clearinghouse is not able to accept electronically transmitted (e-mail) documents. To meet the electronic format requirement, the environmental document must be copied to a compact disk (CD) and sent with the hard copies of the document to the State Clearinghouse.

NEPA SCOPING CAN SATISFY CEQA SCOPING (PUBLIC RESOURCES CODE 21083.9)

A scoping meeting held pursuant to the National Environmental Policy Act (NEPA) can be used to satisfy the scoping meeting requirement under CEQA (when such a meeting is required) as long as the Department meets the CEQA notice requirements [see Public Resources Code 21083.9(b)(c)].

NOTICE REQUIREMENTS FOR MILITARY ZONES AND FLIGHT PATHS (PUBLIC RESOURCES CODE 21098)

This new code section allows the U.S. Department of Defense (DOD) or a military service to request CEQA notices for projects that may affect military flight paths or airspace. If the DOD or military service makes such a request, then they must supply the Department with the appropriate contact office and address.

Invalidations

The California Court of Appeals for the Third District recently upheld a trial court decision that invalidated several CEQA Guidelines (see *Communities for a Better Environment v. California Resources Agency*, Case Number C038844). The Guidelines that were invalidated are:

1. CEQA GUIDELINES 15064 AND 15130—CUMULATIVE IMPACTS AND DE MINIMIS CONTRIBUTIONS

Guidelines 15064(i)(4) and 15130(a)(4) provided that a lead agency did not need to prepare an EIR for a project that had a de minimis contribution to a significant cumulative impact caused by other projects. The de minimis incremental impact by itself could be deemed not significant and thus not trigger the need to prepare an EIR.

2. CEQA GUIDELINE 15130(B)(1)(B)2—CUMULATIVE IMPACTS AND PROBABLE FUTURE PROJECTS

Cumulative impact analysis under CEQA requires an analysis of past, present and probable future projects. Guideline 15130(b)(1)(B)2 stated "Probable future projects" may be limited to those projects requiring an agency approval for an application which has been received at the time the notice of preparation is released, unless abandoned by the applicant; projects included in an adopted capital improvements program, general plan, regional transportation plan, or other similar plan; projects included in a summary of projections of projects (or development areas designated) in a general plan or a similar plan; projects anticipated as later phase of a previously approved project (e.g. a subdivision); or those public agency projects for which money has been budgeted.

This Guideline was invalidated to the extent that the final "or" could be interpreted so that only one of the above types of projects need be discussed.

3. CEQA GUIDELINE 15064(H)—REGULATORY STANDARDS AS THRESHOLDS OF SIGNIFICANCE

This guideline provided that a change in the environment is not a significant effect if the change complies with a standard, which was defined in part as a rule, regulation, order, or other standard of general application; such as a quantitative, qualitative or performance requirement found in a statute, ordinance, or resolution.

Two other CEQA Guidelines were found invalid-- one that allowed agencies not to reanalyze environmental impacts in a second-tier EIRs if the only reason for the reanalyzing the impact would be to set up the adoption of a Statement of Overriding considerations [Guideline 15152(f)(3)(C)] and the other that exempted organizational or administrative activities that were "political" from the requirements of CEQA [Guideline 15378(b)(5)].